BUILDING COMMUNITIES

Overview

As one of the fastest growing states in the country, Florida's communities face a variety of challenging issues. In recent years, the Florida Legislature has addressed several such issues that are crucial to the maintenance and development of Florida's communities, including:

Growth Management;
Property Rights;
Affordable Housing;
Building Codes; and
Emergency Shelter and Special Needs.

Rapid population growth and the corresponding development place pressures on both Florida's natural and built environments. To address these pressures, the Florida Legislature adopted a series of laws that govern growth management. Through a system of state, regional, and local government planning processes, these laws attempt to provide for the orderly development of Florida's communities. The Legislature has enacted several refinements to the state's growth management system since its original adoption in 1985.

State and local governments are restricted in their attempts to manage the state's growth by the U.S. Constitution and the Florida Constitution, which place limits on the state's ability to regulate the use of private property. Government must balance society's goals with individual property rights, and striking the appropriate balance between the two has been an ongoing issue for the Legislature.

The availability of safe, decent, affordable housing is vital to healthy communities and is an important element of the state's growth management system. In 1992, the Legislature dramatically increased its commitment to the provision of affordable housing by earmarking a portion of the state's documentary stamp taxes to fund state and local government affordable housing initiatives. Despite this commitment of resources, state and local governments continue to struggle to meet the growing demand for affordable housing.

While not an explicit part of the state's growth management system, building codes serve the complementary role of ensuring the safety of Florida's built environment. The reform of Florida's building codes system has been an issue within the construction industry for many years. It was not until Florida endured a series of natural disasters – Hurricane Andrew in August 1992, the "Storm of the Century" in March 1993, Tropical Storms Alberto and Beryl in the Summer of 1994, and Hurricanes Erin and Opal during the 1995 Hurricane Season – that the building code system's effectiveness took on statewide significance for all of the stakeholders in the building codes system. During the 1998 and 2000 Legislative Sessions, the Legislature enacted major reforms of the building code system.

Finally, Florida's susceptibility to natural disasters, including hurricanes, floods, and wildfires, requires policy makers not only to provide for the safety of the state's built environment, but also

to address the availability of shelters to house and protect citizens. In the wake of Hurricane Andrew, the 1993 Legislature declared its intent to not have a deficit of safe shelter space in any region of the state by 1998 and thereafter. Achieving this goal has been an ongoing challenge.

GROWTH MANAGEMENT

Summary of 1985 Legislation

Local Comprehensive Plans

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, ss. 163.3161-163.3244, Florida Statutes, established a growth management system in Florida which requires each local government (or combination of local governments) to adopt a comprehensive land use plan that includes certain required elements, such as a future land use plan, a capital improvements element, and an intergovernmental coordination element. The local government comprehensive plan is the policy document guiding local governments in their land use decision-making. Under the act, the Department of Community Affairs was required to adopt, by rule, minimum criteria for the review and determination of compliance of the local government comprehensive plan elements with the requirements of the act. The minimum criteria rule (Rule 9J-5, Florida Administrative Code) includes specific elements to be included in the plan and provides criteria for reviewing local comprehensive plan amendments.

After a comprehensive plan has been adopted, subsequent changes are made through amendments to the plans. There are generally two types of amendments: 1) amendments to the future land use map; and 2) text amendments that change the goals, objectives or policies of the plan. In addition, every 7 years a local government must adopt an Evaluation and Appraisal Report (EAR) assessing the progress of the local government in implementing its comprehensive plan. The local government is required to amend its comprehensive plan based on the recommendations in the report. Local government comprehensive plan amendments may only be made twice in a calendar year unless the amendment falls under specific statutory exceptions. In 1999, the Department of Community Affairs reviewed 12,000 local comprehensive plan amendments.

Developments of Regional Impact

Chapter 380, Florida Statutes, provides for the Development of Regional Impact (DRI) program, which provides for state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, have a substantial effect on the health, safety, or welfare of the citizens of more than one county. For those land uses that are subject to review, numerical thresholds are identified. Any proposed change to a previously approved DRI that creates a substantial likelihood of additional regional impact, or any type of regional impact that constitutes a "substantial deviation," requires further DRI review and requires a new or amended local development order.

Regional Planning Councils

The State of Florida's 67 counties are divided into 11 planning regions, each of which is represented by a Regional Planning Council. Chapter 186, Florida Statutes, provides for the creation of 11 regional planning councils and for the adoption of strategic regional policy plans by the RPCs. The Strategic Regional Policy Plan is a long-range guide for physical, economic, and social development of a planning district through the identification of regional goals and policies. These strategic regional policy plans must be consistent with the State Comprehensive Plan.

State Comprehensive Plan

The State Comprehensive Plan, Chapter 187, Florida Statutes, enacted in 1985, provides long-range guidance for the orderly, social, economic, and physical growth of the state. The plan includes twenty-six goals covering subjects that include land use, urban and downtown revitalization, public facilities, transportation, water resources, natural systems, and recreational lands. By October 1st of each odd-numbered year, the Governor's Office is required to prepare any proposed revisions to the plan deemed necessary and present proposed revisions to the Administration Commission. The Administration Commission must review such recommendations and forward to the Legislature any proposed amendments approved by the Commission.

Concurrency

The concurrency requirement of the Local Government Comprehensive Planning and Land Development Regulation Act (part II, chapter 163, Florida Statutes) is a growth management tool designed to accommodate development by ensuring that adequate facilities are available as growth occurs. The "cornerstone" of the concurrency requirement is the concept that development should be coordinated with capital improvements planning to ensure that the necessary public facilities are available with, or within a reasonable time of, the impacts of new development. Under the requirements for local comprehensive plans, each local government must adopt levels of service (LOS) standards for certain types of public services and facilities. Generally, LOS standards apply to sanitary sewer, solid waste, drainage, potable water, parks and recreation, roads and mass transit. School concurrency may be imposed by local option. The local government must ensure that transportation facilities needed to serve new development are in place or under actual construction within 3 years after issuance of the certificate of occupancy. The intent is to keep new development from significantly reducing the adopted LOS by increasing the capacity of the infrastructure to meet the demands of new development.

Summary of 1998 - 2000 Legislative Action Taken

In 1998, the Legislature enacted chapter 98-176, Laws of Florida, which included planning for educational facilities. This legislation expanded the minimum criteria of the future land use element to require criteria to encourage the location of schools proximate to urban residential areas; to require that local governments seek to co-locate public facilities with public educational facilities; and to comply with these school siting requirements no later than October 1, 1999, or

the deadline for their evaluation and appraisal report (EAR), whichever comes first. The school siting requirement can be met by the adoption of an optional public school facilities element adopted to implement a school concurrency plan. In addition, this legislation created concurrency and interlocal coordination requirements for local governments that chose to adopt a public schools facilities element to implement school concurrency in the comprehensive plan. School districts are required to create 10-year and 20-year school facilities programs, including proposed funding amounts and sources, and "to seek" co-location facilities with local governments with or close to residential areas.

The 1998 legislation also addressed the State Comprehensive Plan and strategic regional policy plans. The review responsibilities of the Executive Office of the Governor were revised relating to the strategic regional policy plans, and the Governor was directed to appoint a committee to review the State Comprehensive Plan.

In 1999, the Legislature enacted chapter 99-378, Laws of Florida, the "Growth Policy Act." As part of this legislation, all local government comprehensive plans are required to comply with school siting requirements by October 1, 1999. Local governments that do not comply with this requirement are prohibited from adopting comprehensive plan amendments until such time as they are in compliance.

The "Growth Policy Act" also addressed urban infill and development by authorizing municipalities and counties to designate urban infill and redevelopment areas based on specified criteria and provided economic incentives for these areas. An Urban Infill and Redevelopment Assistance Grant Program, to be used by local governments to develop community participation processes for the development of an urban infill and redevelopment plan, was also created. Matching grants funds are also provided for implementing urban infill and redevelopment projects that assist the goals identified in a local governments' urban infill and redevelopment plan. The act also increased the number of policies adopted as specific goals of the state comprehensive plan relating to urban redevelopment and downtown revitalization. Furthermore, the substantial deviation numerical standards under the DRI program were increased by 50 percent for a project located wholly within an urban infill and redevelopment area.

During the 2000 Session, related legislation passed in chapter 2000-317, Laws of Florida, which revised provisions relating to the financial incentives a local government may offer in an urban infill and redevelopment area and authorized the transfer of unused funds between grant categories under the Urban Infill and Redevelopment Assistance Grant Program.

Implementation

Fifteen years have passed since the enactment of the state's growth management system in 1985. At this time, all counties and municipalities, except newly created municipalities, have adopted a local comprehensive land use plan to guide their land use decision-making. As discussed above, the planning process is intended to evolve as state, regional, and local conditions change. As a result, implementation is an ongoing process.

Results and Impact

The results and impacts of the state's growth management legislation are in dispute and are difficult to quantify. Some argue that factors, including but not limited to, state and local budgetary constraints, political climates and increased population in the state, have contributed to the inability to fully realize the goals envisioned by the 1985 Legislature. Concerns were expressed during the 2000 Legislative Session that DRIs have outlived their usefulness, the Department of Community Affairs is too regulatory-minded in its approach to the comprehensive planning process, and that other substantive changes are needed. Others argue that these laws have been very successful in directing growth patterns. The Governor has issued an Executive Order to create a Commission to study growth management prior to the 2001 Legislative Session. It is anticipated that the Governor's Commission will study the issues raised during the 2000 Legislative Session.

Since the urban infill and redevelopment programs are newly created, it is difficult to ascertain the results and successes of these programs. The Department of Community Affairs is currently attempting to determine the proper timetable and benchmark. For fiscal year 2000-01, the Legislature reappropriated $2.4 million for the Urban Infill and Redevelopment Assistance Grant Program.

PROPERTY RIGHTS

Summary of Legislative Action Taken

Before the legislature passed the Bert J. Harris Private Property Rights Protection Act (Harris Act), Florida landowners had two judicial remedies available when their properties' value or usefulness was destroyed or severely diminished by government regulation. A property owner could proceed against the governmental entity under the doctrine of equitable estoppel to enjoin the government from revoking a permit or attempting to apply a new regulation. This doctrine applies when a property owner, in good faith reliance on a governmental act or omission with respect to governmental regulations, has made a substantial change in position or incurred substantial expenses. Alternatively, if a regulation directly caused a substantial diminution in value, one that reached the level of a taking of the property, the property owner could file an inverse condemnation claim under the Fifth Amendment of the United States Constitution or Article X, section 6 of the Florida Constitution. However, a property owner would not be entitled to any relief if the government action was not a "taking" or the property owner did not satisfy the equitable estoppel requirements.

The 1995 Legislature passed the "Bert J. Harris Jr., Private Property Rights Protection Act." The Harris Act provides for a circuit court cause of action for property owners whose current use or vested right in a specific use of real property is inordinately burdened by the actions of a governmental entity. The Harris Act authorizes relief, including compensation, to be granted by the court to the private property owner for the actual loss to the fair market value of the real property at issue. Under the Harris Act, a property owner may also be entitled to an award of attorney's fees. The Harris Act provides parameters that describe when private property is "inordinately burdened." The Harris Act defines "existing uses" which include actual, present

uses or activities on the property and reasonably foreseeable, non-speculative land uses which are suitable for the property; are compatible with adjacent land uses; and have created a fair market value in the property greater than the fair market value of the actual, present use or activity.

Implementation

Since the 1995 act became law, there have been numerous court cases filed by property owners. In addition, an Attorney General opinion, Fla. AGO 95-78, states that the Harris Act does not provide for an award of damages to property that is not the subject of a governmental action, but that suffered a diminution in value as a result of the regulation of the subject property.

Results and Impact

It is difficult to ascertain the true result of the 1995 legislation. It is impossible to determine how many actions were not taken due to fear of a lawsuit under the Harris Act. It appears as though the Harris Act benefits property owners as it gives them a right to compensation not otherwise granted.

AFFORDABLE HOUSING

Summary of Legislative Action Taken

The Florida Housing Finance Agency was created nearly 20 years ago to meet the growing demand for affordable housing for Florida's families. In 1997, the Legislature enacted chapter 97-167, Laws of Florida, to reconstitute the Florida Housing Finance Agency as the Florida Housing Finance Corporation (Corporation). The Corporation is now a public corporation and public body corporate and politic that consists of a board of directors composed of the Secretary of the Department of Community Affairs as an ex officio and voting member and eight members appointed by the Governor, subject to confirmation by the Senate.

The 1997 legislation transferred all of the Agency's assets and liabilities to the Corporation. The Corporation continues to perform most of the functions traditionally performed by the Agency. Under the new structure, the Department of Community Affairs contracts with the Corporation on a multi-year basis to administer state housing programs. The Corporation is required to maintain a business plan, which includes performance measures and targets.

During the 2000 Legislative Session, the Legislature passed chapter 2000-290, Laws of Florida, which addresses a variety of affordable housing issues. The law created, but does not fund, the State Farmworker Housing Pilot Loan Program to provide low interest loans for the construction of affordable housing for farmworkers, and modifies several current affordable housing programs. The law also revised the current low-income housing property tax exemption to ensure that housing provided through local housing finance authorities is covered under the exemption, and addresses discrimination against affordable housing by prohibiting discrimination in land use decisions and in permitting of development based on race, color, national origin, sex, disability, familial status, religion, or the source of financing of a

development or proposed development. Finally, the law modified statutes governing the State's Private Activity Bond Allocation to allow more time to complete affordable housing bond deals and to ensure that allocations are not lost.

Implementation

In fiscal year 1999-2000, the program allocation from the documentary stamp tax collections for the State Housing Initiative Partnership (SHIP) program, through which funds are provided to local governments, was $90,900,000. Tax collections in excess of anticipated revenues provided an additional $33,129,018 to SHIP recipients -- counties and specified municipalities. The total SHIP disbursement to all participating counties and cities totaled $124,029,018. The state affordable housing allocation from the documentary stamp tax was $40,085,00. The Corporation allocated these funds to several state housing programs, which are described in the "Florida Housing Finance Corporation: 1999 Annual Report."

Results and Impact

The Florida Legislature established the goal that by the year 2010, "this state shall ensure that decent and affordable housing is available for all its residents." Despite having housing programs and a delivery system considered the best in the nation by many, Florida's progress in meeting its 2010 affordable housing goal has been limited.

The Affordable Housing Study Commission (Commission), is a statutory body (s. 420.609, F.S.) whose duties include analyzing solutions and programs to address the state's acute need for housing for people with very low to moderate income, and making policy and funding recommendations to the Governor and the Legislature. In its "1999 Final Report," the Commission presented the results of its biennial evaluation of Florida's progress towards meeting the 2010 affordable housing goal. In brief, the Commission found that the additional 22,134 housing units provided with 1998 program funds allowed Florida to keep up with only two-thirds of the growth of cost burdened households during that year, and did not provide for the backlog of 1.35 million cost burdened households.

BUILDING CODES

Summary of 1998 Legislation

In 1996, Governor Chiles established a Building Codes Study Commission to evaluate Florida's building codes system and develop recommendations to reform and improve it. In 1998, the study commission issued its findings and proposed a building codes system. The proposed system included a single, statewide building code that would govern all technical requirements for Florida's public and private buildings and take into account appropriate local variations.

The 1998 Legislature considered the findings and recommendations of the Building Codes Study Commission and enacted chapter 98-287, Laws of Florida, which implemented many of the Commission's recommendations.

Chapter 98-297, Laws of Florida, reconstituted the Board of Building Codes and Standards as the Florida Building Commission, which was required to submit the Florida Building Code, as adopted by the Commission, to the Legislature before the 2000 Legislative Session for review and approval or rejection. In addition, the Commission was required to prepare a list of recommended revisions to the Florida Statutes necessitated by the adoption of the Florida Building Code. The act required the Department of Insurance to adopt the Florida Fire Prevention Code and the Life Safety Code, and provided that upon initial adoption, the Florida Building Code and the Florida Fire Prevention Code and the Life Safety Code are deemed adopted by all local jurisdictions. The act allowed, with some restrictions, local governments to adopt more stringent requirements to the code, and expanded the responsibilities of local governments for permitting, plans review and inspection of facilities that are currently reviewed by state agencies. Finally, the act authorized the Florida Building Commission to create and administer a statewide product evaluation system.

Implementation of 1998 Legislation

On February 14, 2000, the Florida Building Commission adopted the Florida Building Code as an administrative rule and submitted it, together with proposed conforming amendments to the Florida Statutes, to the 2000 Legislature for consideration. The draft code was noticed for rule adoption on February 18, 2000, in the Florida Administrative Weekly.

The Commission established standards for hurricane protection in the proposed code that are based on a national model building code, federal regulations, and standards evolving out of southeast Florida's experience with Hurricane Andrew. Specifically, for protection against hurricane waters, the code incorporates the flood plain management standards of the Federal Emergency Management Agency's National Flood Insurance Program. For coastal construction, it incorporates the Florida "coastal building zone" storm surge protection standards for coastal construction. For protection against hurricane winds, the Commission proposed adoption of the American Society of Civil Engineers (ASCE), Standard 7, 1998 edition.

Under the ASCE standard, buildings constructed in regions that are expected to experience hurricane winds of less than 120 mph must be designed to withstand external wind pressures identified for their location. Buildings constructed in regions that are expected to see hurricane winds of 120 mph or greater must not only be able to withstand external wind pressures, but also internal pressures that may result inside a building when a window or door is broken or a hole is created in its walls or roof by large debris. Areas within 1 mile of the coast that experience at least 110 mph winds are also required to meet the 120 mph standards for external and internal pressures. Alternatively, approved window and door protections such as hurricane shutters can be installed in lieu of designing to withstand internal pressures.

Summary of 2000 Legislation

Chapter 2000-141, Laws of Florida, provides for the adoption of the Florida Building Code, a unified building code for the State of Florida, effective July 1, 2001. The act directs the Florida Building Commission to continue the process to adopt the Florida Building Code as an administrative rule, subject to specific legislative direction. The Commission is directed to adopt

the hurricane wind protection requirements of ASCE, Standard 7, 1998 edition, with the exception of the eastern border of Franklin County to the Florida-Alabama line, where the wind born debris region is limited to 1 mile of the coast. The act directs the Commission to modify the code to address issues relating to water treatment units, permitting, and special inspectors. The act also directs the Commission to recommend a statewide product approval system to the Legislature prior to the 2001 Legislative Session.

The act delegates to local governments the enforcement of state agency construction regulations, which are to be included in the code (with limited exceptions), and clarifies the Commission's authority to interpret the code, hear appeals of local interpretations, and amend the code on a yearly basis. The act transfers the threshold inspector certification program to the Board of Architecture and the Board of Professional Engineers and revises the program. The act revises the Manufactured Buildings statute and creates a factory-built school building program.

The act also requires rate filings for residential property insurance to include actuarially reasonable discounts, credits, or other rate differentials for the installation or implementation of fixtures or construction techniques to mitigate windstorm damage. In addition, the act requires the Department of Community Affairs to initiate a project to demonstrate the cost and risk reduction of the Florida Building Code and requires the department to issue a report of its findings to the Legislature and the Governor.

Implementation, Results, and Impact

As noted above, the 2000 legislation provides for the Florida Building Commission to continue the process to adopt the Florida Building Code as an administrative rule. Currently, the Commission is proceeding with the rule making process. The Florida Building Code will take effect July 1, 2001.

EMERGENCY SHELTER AND SPECIAL NEEDS LEGISLATION

Summary of Legislative Action Taken

In 1998, the Department of Community Affairs surveyed existing schools, community colleges, universities and other public buildings to measure sufficiency and adequacy of shelter space in Florida. The department's 1999 Shelter Retrofit Report (Shelter Report) recognizes a considerable deficit, in both the amount of shelter space and the adequacy of existing space. The 2000 Florida Legislature passed legislation, which contains both sheltering and special needs components. Chapter 2000-140, Laws of Florida, provides the following provisions:

Sheltering

The legislation appropriated $10 million from the Florida Hurricane Catastrophe Fund for shelters, including retrofitting of shelter space ($3 million) and programs to improve wind resistance ($7 million). The legislation exempted school districts that are not located in a regional planning council area with a hurricane shelter deficit from having to incorporate public shelter criteria. Language was included that clarified that a person or organization that provides

shelter for profit is an instrumentality of the state, which enables the provider to enjoy the same tort caps currently provided to the state.

Special Needs

The legislation amended registration procedures for those persons with special needs during an emergency and provides for recruitment of health care practitioners to staff special needs shelters. This legislation granted both the Agency for Health Care Administration and the Department of Health certain powers and obligations, and appropriated $600,000 to the Department of Health.

Implementation

According to the Shelter Report, only 2 percent of existing structures comply with American Red Cross guidelines. This percentage is expected to increase to 36 percent with minor retrofitting.

Results and Impact

Retrofitting existing structures enables the state to maximize resources. This legislation abolished the 3-mile rule, which previously required new construction to be built to shelter quality only when another school of shelter quality was not within a 3-mile radius. Alternatively, this legislation replaced the 3-mile rule with regional planning council criteria, which better funnels resources to the most vulnerable areas. In treating private, for-profit providers of space as instrumentalities of the state, both sovereign immunity and tort caps, when sovereign immunity is waived, are available to the provider. This provision should encourage more private property owners to offer space during an emergency.

Finally, the special needs language identified the Department of Health as the lead agency, authorized certain powers, and directed compliance with specific duties. In addition to the $600,000 appropriation, this bill provided two positions to the Department for special needs program implementation. This bill also named the Departments of Children and Families, Elder Affairs, and the Agency for Health Care Administration as partnering entities.